



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Centex Construction Company, Inc.

File: B-238777

Date: June 14, 1990

Timothy Sullivan, Esq., Dykema Gossett, for the protester.
Sharon K. Matsumura, Esq., and Penny Rabinkoff, Esq.,
Department of the Navy, for the agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Where the solicitation states that proposed price is more important than technical evaluation factors for source selection purposes but also clearly provides for evaluation of technical factors, there is nothing improper in the selection of a higher-priced offeror when the agency reasonably determines that the selected firm's evidenced technical superiority offsets the price premium associated with its offer.
2. Where protester's corporate resources and experience and quality control plan are evaluated in part using information obtained by the agency through contact of protester-furnished references, agency is not required to permit protester to rebut that information since it is historical in nature, and protester thus is unlikely to be able to make a significant contribution to its interpretation.
3. Where a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of the proposal that received less than the maximum possible score. It is not the agency's responsibility to help a firm whose proposal, although acceptable, simply is not the best one in the competition to bring the proposal up to the level of other higher ranked proposals.

DECISION

Centex Construction Co., Inc., protests the award of a contract to M.A. Mortenson Company under request for

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proposals (RFP) No. N62477-87-R-0275, issued by the Chesapeake Division, Naval Facilities Engineering Command, for the construction of an aircraft and flight equipment laboratory to provide hangar and secure test facilities for classified aircraft programs at the Naval Air Test Center. Centex asserts that the Navy, in its evaluation of proposals, improperly gave greater weight to technical factors than to price, failed to conduct meaningful discussions with Centex, and unreasonably downgraded Centex's technical proposal in certain areas.

We deny the protest.

The RFP was issued on October 13, 1989, requesting the submission of price and technical proposals for the construction of a new aircraft and flight equipment laboratory. The RFP's stated evaluation and source selection criteria provided that the government reserved the right to make an award to other than the lowest-price offeror and select the proposal determined to be most advantageous to the government, price and other factors considered. Offerors were advised that price was weighted greater than the technical factors. The technical evaluation factors and subfactors were listed in the RFP as follows:

1. Construction Plan And Capability
 - a. Construction Schedule
 - b. Technical Proposals
 - c. Sediment and Erosion Control Plan
 - d. Warranty Transfer/Turnover Plan
2. Corporate Resources and Experience
 - a. Prime Contractors Project Experience
 - b. Corporate Background
 - c. Corporate Resources
 - d. Subcontracting Plan
 - e. Safety
3. Quality Control Plan
4. Government Contracting Experience

Offerors were advised that construction plan and corporate resources were weighted equally, quality control was weighted less than construction plan and corporate resources, but more than government contracting experience. Although not disclosed to the offerors, the Navy assigned weights to the various factors for evaluation purposes which were consistent with the descriptions given in the solicitation. Thus, price was weighted at 51 percent, construction plan and capability 15 percent, corporate resources and experience 15 percent, quality control plan 10 percent and government experience 9 percent. The source selection plan

also provided for the numerical scoring of price proposals with the lowest price receiving the maximum points and the other price proposals receiving points proportionately.

Initial proposals were received from six firms, including Centex and Mortenson. The evaluation of these initial proposals resulted in two being excluded from the competitive range. Of the four remaining offerors, Centex's initial price was the lowest received. The firms were assigned price points in relation to the percentage by which their prices exceeded the low price submitted by Centex. Accordingly, Centex received the highest price score of 51 and Mortenson, the second low offeror, received a price score of 50.1.

The proposals were also evaluated on the basis of the technical factors set forth in the RFP. Mortenson's proposal received the highest score, receiving 39.3 out of a possible 49 points. In contrast, Centex was ranked fourth technically, receiving 33.1 points. Two rounds of discussions were held with all offerors in the competitive range. The Navy then requested best and final offers (BAFOs) from the four firms.

Upon completion of the evaluation of BAFOs the proposals were reevaluated and rescored. The following is the final rankings and scores of the four competitive range offerors:

	<u>Price</u>	<u>Tech.</u>	<u>Total</u>
Mortenson	50.1	40.5	90.6
Company A	48.7	39.8	88.5
Company B	49.6	37.4	81.0
Centex	51.0	34.2	85.2

There was a 1.7 percent difference in price between Centex, the low offeror, and Mortenson.

The Source Selection Advisory Board then made a point by point comparison between Mortenson, the firm with the highest technical rating and highest overall score, with Centex, the firm with the lowest price. The Board determined that the overall proposal submitted by Mortenson offered the government a contractor with proven skills and abilities to perform the requirement in a quality manner and in the required time frame at a fair and reasonable price. The source selection authority concurred with the Board's findings and award was made to Mortenson on February 22. Centex's protest followed the Navy's award to Mortenson. Although Centex filed its protest within 10 days of the award, performance of the contract has not been withheld based upon the agency's determination that urgent and

compelling circumstances exist which would not permit awaiting our determination in the matter. 31 U.S.C. § 3553(d)(2)(A)(ii) (1988); 4 C.F.R. § 21.4(b)(2) (1990).

Centex's essential basis for protest is the assertion that the Navy's evaluation of proposals was inconsistent with the criteria stated in the RFP. Centex contends that the importance of price as contemplated by the award criteria was nullified by the Navy's assignment of nearly equal weights to price and technical factors and by the formula utilized for purposes of converting prices to point scores. Centex contends that the Navy's methodology resulted in the point spread between technical scores having a significantly greater impact on the award decision than the point spread between price scores.

Initially, we note that the RFP made no representation that price alone would be the sole basis for award. Under the RFP, the government expressly reserved the right to make award to other than the lowest price offeror. Consistent with the RFP's statement that price was weighted greater than technical, the weight actually assigned to price (51 percent) was more than the weight for technical (49 percent). In our view, a 51/49 percent allocation satisfies the evaluation statement that price was of greater importance than technical. See Frequency Eng'g Laboratories Corp., B-225606, Apr. 9, 1987, 87-1 CPD ¶ 392, in which our Office concluded that a weight distribution of 52 percent for price and 48 percent for technical met an RFP requirement that price was more important than technical and management combined. Further, the use of normalized point ratings for price, that is, a point scoring system under which the lowest price proposed is assigned maximum price points and others are assigned points based on their closeness to the low offer, is relatively common. See, e.g., Didactic Systems, Inc., B-190507, June 7, 1978, 78-1 CPD ¶ 418.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP in fact specifies that price will be the determinative factor. Frequency Eng'g Laboratories Corp., B-225606, supra. Thus, in the absence of such an express provision, as in this case, the procuring agency retains the discretion to select a higher priced but also technically highly rated proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Id.

The only question, then, is whether the selection of Mortenson's offer, instead of Centex's, was a procurement

decision rationally based and consistent with the established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The overall determination of the relative desirability and adequacy of technical proposals is primarily a function of the procuring agency, which enjoys a reasonable degree of discretion in evaluating them. Orange State Consultants, B-223030, July 15, 1986, 86-2 CPD ¶ 69.

Based on our review of the record, we find that the Navy's evaluation was reasonable and consistent with the evaluation criteria. As explained, the weight actually assigned to price (51 percent) was greater than the weight for technical (49 percent), consistent with the RFP's statement that price was more important than technical. Centex submitted the lowest priced offer and received the maximum rating of 51 points. As indicated above, the remaining price proposals were converted to normalized point ratings. Mortenson submitted the second low offer and in accordance with the normalization formula received 50.1 points. Both Centex and Mortenson proposed prices that were below the government estimate and there was only a 1.74 percent difference between the two offerors' prices. We further note that the almost one point difference in the price point scores between Centex and Mortenson, which represents 2 percent of the total price score, reasonably corresponds to the 1.7 percent difference in prices between the two offers.

With respect to final technical points, Mortenson received 40.5 and was ranked first, while Centex received 34.2 and was ranked fourth. As previously stated, prior to making an award determination, the Navy made a point by point comparison of the two offers. Under the evaluation factor, construction plan and capability, Centex and Mortenson were basically evenly rated. It is clear from the record that the Navy's principal concern regarding Centex's proposal related to corporate resources and experience, quality control and government experience. Specifically, under corporate resources and experience, the record indicates that Mortenson's prime contractor project experience was a little more extensive. Also, Mortenson's references rated it an excellent contractor while Centex's references in general considered Centex to be "okay."

In addition, Mortenson's quality control plan was rated 9 points out of 10 because its quality control representative had previous experience with hangar projects and Mortenson's plan provided examples of in depth job specific procedures for quality control. Centex was rated 6 points for quality control mainly because its plan, although job

specific by specification section, was considered by the Navy to be "generic" within each section. Again Mortenson's references indicated that Mortenson's quality control plan worked well and that Mortenson was fully behind the program. On the other hand, Centex's references indicated that Centex did the minimum required and did not fully support their quality control program.

With respect to government contracting experience, Mortenson received 8.1 points out of 9 points, while Centex received 6.3 points. References contacted for Mortenson indicated that it was very responsive to warranty work, that punchlist items were completed promptly and that they would do business with this firm again. The projects referenced by Centex were all still under construction, so the Navy contacted federal government projects previously listed in another section of Centex's proposal. These references stated that Centex performed warranty work with some reluctance and that punchlist items took up to 1 year to complete.

Centex specifically argues it was improperly downgraded for various technical factors and subfactors. For example, Centex contends that the Navy's "average" rating for its quality control plan was unwarranted given the Navy's (another procuring activity) approval of that same plan under another construction contract and the Navy's "superior" rating of that same plan under other recent construction procurements. Additionally, Centex contends that the Navy's "average" rating for its "Sediment and Erosion Control Plan" was unreasonable. Centex maintains that it provided a comprehensive outline submission, together with a site drawing, of its erosion control plan. With respect to the Navy's quality control evaluation, we do not find it unusual or improper that different evaluators for different construction projects would have a different perception concerning Centex's quality control plan. The record shows that Centex was reasonably downgraded for quality control because its proposal was considered to be insufficiently job specific, the proposed quality control manager lacked experience with hanger projects and references indicated that quality control was not given appropriate priority by the firm. Regarding Centex's sediment and erosion control plan, Centex received a higher rating than Mortenson. The record shows that while both plans were acceptable, neither plan was considered outstanding, and deserving of maximum points. In our view, with respect to the Navy's evaluation, Centex is basically expressing its disagreement with the judgment of the Navy's evaluators which is not sufficient to show that the agency's

evaluation was unreasonable.^{1/} Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466.

Centex also contends that the discussions held with the firm were inadequate. The protester argues, in this respect, that the Navy was required to advise it of weaknesses or deficiencies in those areas where Centex was rated "average" or low end of average. With regard to the subfactor, "Corporate Resources," Centex argues that the Navy should have informed Centex that the Navy considered Centex's proposed project manager or other personnel to be weak or deficient.^{2/} Centex maintains that it would have

^{1/} Centex also argues that based on the evaluation of its proposal, it appears that the Navy accorded undue weight to certain subfactors which was inappropriate and unreasonable. Specifically, Centex maintains that under the technical factor, Construction Plan and Capability, which encompassed four subfactors, the first two subfactors should have been of greater importance than the second two subfactors. Similarly, Centex argues that under the technical factor, Corporate Resources and Experience which included five subfactors, it would appear reasonable to assign relative weights in descending order of importance, with contractor experience given the greatest weight and safety the least weight. We note that the RFP did not indicate the relative weights of the subfactors. However, from our review of the record, it is clear that the actual weight assigned by the agency for the applicable subfactors was exactly as the protester argues.

^{2/} Centex alleges that the Navy evaluated the project manager proposed by offerors in accordance with an internal set of criteria by which points were awarded based on longevity in the industry. The Navy specifically denies this and our review of the record fails to show that this was the case. Centex has presented no evidence to support this allegation.

substituted new personnel for those identified in its proposal to satisfy the Navy's requirement. With regard to "Quality Control Plan," Centex argues that had the Navy conducted proper discussions, it could have improved its plan to tailor it more to the particular project and it could have substituted its proposed Quality Control manager.^{3/}

The content and extent of discussions in a given case are matters of judgment primarily for determination by the agency involved and are not subject to question by our Office unless they lack a reasonable basis. Bauer of Am. Corp. and Raymond Int'l Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 CPD ¶ 380. There is no requirement that an agency conduct all encompassing discussions. Where, as here, a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of it that has received less than the maximum possible score. Structural Analysis Technologies, Inc., B-228020, supra.

Under "Corporate Resources," Centex was rated "normal" and was considered completely acceptable. Centex was not considered to be weak or deficient in this category. The Navy, however, determined that Mortenson's team approach was better. Likewise, with respect to Centex's "Quality Control Plan," Centex's plan was considered strong but received a normal score based on Centex's references which indicated some dissatisfaction with the firm's quality control program. To the extent Centex objects to the downgrading of its proposal based on unfavorable information obtained from Centex's references, where, as part of the technical evaluation of offers, offerors have been required to furnish references on prior experience and are aware that these references may be contacted, the contracting agency may consider the replies of the references without being required to seek the offeror's comments concerning the information. We view this information as essentially historical in nature and protester is unlikely to be able to make a significant contribution to its interpretation. Saturn Constr. Co., Inc., B-236209, Nov. 16, 1989, 89-2 CPD ¶ 467.

^{3/} Centex also objects to the lack of discussions with respect to the "safety" factor. However, this factor was worth a maximum of 1 point and Centex received a final score of .4. Even if Centex received the maximum point for this factor, Mortenson would remain the highest rated offeror, and the relative standings of the offerors within the competitive range would not change.

The record does not indicate, as Centex argues, that the Navy selectively contacted the references. The fact is, none of Centex's references contacted gave it more than an average rating. Thus, we find that the evaluation based on the references was reasonable. Regarding discussions, the record shows that while Centex's offer was acceptable, it was judged not to be the best one in the competition. The agency was not required through discussions to bring Centex's proposal up to the level of the higher rated proposal.

Based on the record before us, we find that the Navy fairly considered the competitive proposals with respect to both price and other evaluated factors in accordance with the terms of the RFP. We therefore find that the agency's award to Mortenson based on its technical superiority was reasonable.

The protest is denied.



for James F. Hinchman
General Counsel